

IN THE MATTER OF  
MIDLAND DISTILLERIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF  
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 2469. Complaint, June 28, 1935—Decision, Jan. 19, 1938*

Where a corporation engaged, as rectifier of distilled spirits, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in purchasing all distilled spirits sold and used in its said products, and in compounding, from purchased alcohol and flavors, gin dealt in by it, and with two small experimental or test stills and one small discontinued still employed for vaporization in connection with manufacture of liqueur sold by it, and in substantial competition, as thus engaged in sale and distribution of its aforesaid product to wholesalers and distributors from coast to coast through traveling salesmen, with those engaged in manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in selling same in trade and commerce among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling such various spirituous liquors and similarly selling same, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of whiskies, gins, and other spirituous liquors sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, and advertising, and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "distilleries" in its corporate name, printed on its stationery, catalogs, and advertising, and on the labels attached to bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller, and that the whiskies and other spirituous liquors contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not own, operate or control any place or places where spirituous liquors are made by process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from word "distilleries" used in connection with liquor industry and products thereof in the trade and by the ultimate purchasing public, and it had no permit to operate as distiller, nor distillers' bond, and never did so operate, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that it was a distiller and that the whiskies and other spirituous liquors sold by it were by it made or distilled from mash, wort, or wash,

by one continuous process, and of giving it unfair advantage over its competitors, and of inducing dealers and purchasing public, acting in aforesaid beliefs, to buy its said whiskies and other spirituous liquors, rectified, and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate or trade names, or in any other manner, misrepresent that they are distillers; to the substantial injury of competition in commerce:

*Held*, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John J. Keenan*, trial examiner.

*Mr. PGad B. Morehouse* for the Commission.

*Dubinsky & Duggan*, of St. Louis, Mo., for respondent.

### COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Midland Distilleries, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of Missouri, with its office and principal place of business in the city of St. Louis, in said State. It is now, and for more than one year last past has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other spirituous liquors from mash, wort, or wash, and in the sale thereof in trade and commerce between and among the various

States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and for more than one year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Upon the premises of respondent's place of business aforesaid there is installed a miniature still for experimental purposes, which still is not used for the distillation from mash, wort, or wash of either spirits or gin. Such rectification of alcoholic spirits does not make or constitute respondent a distillery or distiller, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, not as commonly understood by the public and the liquor industry. For a long period of time the word "Distilleries" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where spirituous liquors are manufactured by a process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, advertising, and labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the said whiskies, gins, and other spirituous liquors therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other spirituous liquors by it so bottled, labeled, sold, and transported, and merely by the use for experimental purposes of a miniature still as set forth in paragraph 2 hereof respondent does not distill the whiskies, gins, and other spirituous liquors by it so bottled, labeled, sold, and transported in the sense in which the word "distilled" is commonly accepted and under-

stood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where spirituous liquors are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous liquors sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, advertising and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous liquors who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representations by respondent, as set forth in paragraph 3 hereof, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous liquors sold by respondent are manufactured or distilled by it from mash, wort, or wash by one continuous process and are calculated to and have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous liquors rectified and bottled by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on June 21, 1935 issued and served its complaint in this proceeding upon respondent, Midland Distilleries, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Jerome F. Duggan, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint; no brief in opposition thereto having been filed or oral arguments of counsel having been made; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent company was incorporated in February, 1934, under the laws of the State of Missouri, and since its organization in the following June, it has been and now is engaged in business as a rectifier of distilled spirits with its office and principal place of business at 314 Market Street, in the city of St. Louis, under a rectifier's basic permit originally issued by the Federal Alcohol Control Administration, under date of November 25, 1935 and later renewed by the Federal Alcohol Administration Division of the United States Treasury Department. Said basic permit is known and designated as "R-424." In the course of its said business, it purchases, rectifies, blends and bottles whiskies, gins, and other spirituous beverages and sells the same in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

When sold, it causes said products to be transported from the State of Missouri into and through various other States of the United

States and the District of Columbia to wholesalers and distributors to whom respondent has sold said products through the medium of salesmen who travel over the United States from coast to coast. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other spirituous liquors from mash, wort or wash, and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is, and for more than one year last past has been in substantial competition with other corporatins and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent has three (3) stills upon its premises—one is a small fifty-gallon still, which was formerly used for vaporization of spirits in connection with the manufacture of the liqueur "Southern Comfort," respondent's principal product. This still is no longer so used. Respondent has two other stills—one a glass still of a three-quart capacity, used for experimental purposes in the nature of sales exhibitions to prospective customers—and the other still is a test still with a capacity of less than a pint, used to check sugar content of respondent's products. Respondent also sells gins and whiskies. The gin which it sells is not made by it from tax-paid and purchased alcohol redistilled over juniper berries and other aromatics, but is compounded by the respondent from purchased alcohol and flavors, and all of the distilled spirits which it sells and uses in its products are purchased.

PAR. 3. For a long period of time, the word "distilleries," when used in connection with the liquor industry, and with the products thereof, has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where spirituous liquors are manufactured by a process of original distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. This respondent does not now and never did own, operate, or control any such place or places, and has never had any permit to operate as a distiller, and has no distillers' bond, and does not now and never did so operate.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, advertising, and labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the said whiskies, gins and other spirituous liquors therein contained were by it manufactured through the process of distillation from mash, wort, or wash. The use by respondent for experimental purposes of the stills hereinbefore described does not constitute it a distiller of the whiskies, gins and other spirituous liquors by it so bottled, labeled, sold, and transported, in the sense in which the word "distilleries," is commonly used and understood by those engaged in the liquor trade and by the public, and does not constitute respondent a distillery or distiller as defined by Section 3247 of the Revised Statutes of the United States regulating Internal Revenue.

PAR. 5. The Commission called a large number of public witnesses for the purpose of ascertaining the reaction of the public to the use of the name "Midland Distilleries, Inc.," in connection with the distilled spirits industry. Of the said public witnesses, some twenty-seven in all, nearly all testified that the corporation name, "Midland Distilleries, Inc.," would lead them to believe that the respondent was a distiller and the manufacturer of the products sold under its label; practically all of the said twenty-seven witnesses testified that they would have a preference for a liquor bottled by a distiller or the manufacturer, and that the respondent's name on its packages would induce them to purchase the products of that concern, or others using such name on the label of the bottle containing the product, in the belief that it was a distiller's product and that a distiller's product would be more uniform and there would be more protection to them in the products made by a distiller than by a rectifier. It was generally testified by all of the above mentioned witnesses that the use of the words "distilling," "distillers," "distilleries," or "distillery" used generally in the trade would lead them to believe that any one using such name was engaged in the "distilling business." The Commission finds that a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by distillers.

PAR. 6. Several members of the trade, distillers, rectifiers and wholesalers, were called as witnesses and testified generally that the competition of the Midland Distilleries, Inc., and other rectifiers calling themselves distillers, was harmful to the whiskey industry;

that in competition sales resistance was increased for the reason that there is a preference on the part of wholesalers and jobbers to deal with a distiller. All of the above mentioned witnesses are in competition with respondent. The evidence discloses that wholesalers were misled by use of the word "Distilleries" in the firm name and on the labels of respondent. The evidence showed that the respondent adopted the name "Midland Distilleries," because at the time of its adoption the president of the company considered that it would be to his benefit from a competitive standpoint, due to the fact that "at that time rectifiers were in very ill repute; the Government had licensed lots of fly-by-night concerns, and a lot of good reputable businesses were ruined, the market was flooded with horrible blends, and at that stage of the game it would have been to our advantage." The Commission finds that the use by respondent of the term "Distilleries" in its corporate name, as aforesaid, on its labels and in its advertising, gave this respondent an unfair competitive advantage over its competitors. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort or wash, whiskies, gins, and other spirituous liquors sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery, catalogs, advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins and other spirituous liquors who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 7. The representations by respondent, as set forth in paragraph 4 hereof, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous liquors sold by respondent are manufactured or distilled by it from mash, wort, or wash by one continuous process and are calculated to and have the capacity and tendency to and do induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous liquors rectified and bottled by the respondent, thereby diverting trade to respondent

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from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

## CONCLUSION

The aforesaid acts and practices of the respondent, Midland Distilleries, Inc., are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto and upon brief filed herein in support of the allegations of the complaint by PGad B. Morehouse, counsel for the Commission, no brief in opposition thereto having been filed or oral arguments of counsel, having been made, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is ordered*, That the respondent, Midland Distilleries, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of a liqueur known as "Southern Comfort," gins, whiskies, liquors and all other alcoholic beverages, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the word "Distilleries" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word or words of like import, (a) that it is a distiller of whiskies, gins, or of a liqueur known as "Southern Comfort" or other spirituous beverages; or (b) that the said whiskies, gins, or liqueur known as "Southern Comfort," or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products

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## Findings

are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

*It is further ordered,* That the said respondent within 60 days from and after the date of the service upon it of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which it is complying, and has complied, with the order to cease and desist hereinabove set forth.

IN THE MATTER OF  
SAMUEL GOLDBERG, TRADING AS U. S. SPECIALTY &  
MFG. CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 2722. Complaint, Feb. 17, 1936—Decision, Jan. 19, 1938*

Where an individual engaged in sale and distribution of candy, including certain assortments, which, sold to jobbers, wholesalers, retailers, and schools, were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumer, were made up of penny candy inferior to that usually retailing for such amount, and were composed of a number of small penny packages within which were included and concealed, as prizes, along with candy, articles of, or coupons representative of, merchandise of unequal and, chiefly, of very little value, but, in case of small number thereof, greater than candy's penny cost—

- (a) Sold to wholesalers and retailers for display to purchasing public in accordance with aforesaid sales plan said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products in accordance with aforesaid plan, contrary to public policy long recognized by the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public so as to involve a game of chance or any other method of sale contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing such product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, thus packed and sold by him, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to him trade and custom from his said competitors as aforesaid, exclude from said candy trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition therein and tend to create monopoly thereof in him and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method; and

- (b) Represented to customers and prospective customers through use of firm name and style including abbreviation "Mfg.", that he was manufacturer of some or all of said merchandise distributed and sold by him, facts being he neither owned, controlled, nor operated any factory whatsoever and did not manufacture any of such merchandise;